

1 Neil A. Goteiner (State Bar No. 83524)
ngoteiner@fbm.com
2 Deepak Gupta (State Bar No. 226991)
dgupta@fbm.com
3 Farella Braun & Martel LLP
235 Montgomery Street, 17th Floor
4 San Francisco, CA 94104
Telephone: (415) 954-4400
5 Facsimile: (415) 954-4480

Rufus T. Rhoades
RUFUS VONTHULEN RHOADES
P.O. Box 7068
Pasadena, CA 91109-7068
Telephone: (626) 683-4566
Facsimile: (626) 792-0195

Attorney for Defendant
PCCE, INC.

6 Attorneys for Defendants
COMCO MANAGEMENT
7 CORPORATION; CONCORD FUNDING
CO., LLC; METCO MANAGEMENT
8 CORPORATION; MONEX CREDIT CO.;
MONEX DEPOSIT CO.; NEWPORT
9 SERVICE CORP.

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 SOUTHERN DIVISION
13

14 UNITED STATES OF AMERICA,
15
16 Plaintiff,

17 vs.

18 COMCO MANAGEMENT
CORPORATION; CONCORD
19 FUNDING CO., LLC; METCO
MANAGEMENT CORPORATION;
20 MONEX CREDIT CO.; MONEX
DEPOSIT CO.; NEWPORT SERVICE
21 CORP.; and PCCE, Inc.,

22 Defendants.
23
24
25
26
27
28

Case No. SACV08-00668 JVS (MLGx)

**DECLARATION OF NEIL A.
GOTEINER IN SUPPORT OF
DEFENDANTS' *EX PARTE*
APPLICATION REQUESTING IRS'
RETURN TO DEFENDANTS OF
DEFENDANTS DOCUMENTS
WHICH THE IRS RECEIVED
FROM VINCENT SPONDELLO**

Date: None set.
Time: None set.
Ctrm: 10 C Hon. James Selna

1 I, Neil A. Goteiner, declare as follows:

2 1. I am a partner at Farella Braun + Martel LLP in San Francisco,
3 California, am admitted to practice law in California and submit this declaration in
4 support of Defendants' *Ex Parte* Application Requesting Return of Privileged
5 Documents in the above-captioned matter. I have personal knowledge of the
6 matters stated herein, and if called to testify, could and would testify competently
7 thereto.

8 2. During the LECG investigation interviews of Spondello, which I in
9 part attended, Spondello stated that he stole documents from Defendants, as he
10 admitted in his deposition. During and after this period, I requested the return of
11 these documents and that Spondello work with me to defend against the IRS claim.
12 Spondello ultimately refused. I explained that the documents were necessary to
13 defend this lawsuit brought by the IRS and that it was Spondello's responsibility as
14 an employee – and long-time employee of Defendant Newport Service Corporation
15 to return the documents and to assist Defendants in the defense of this action.
16 When Spondello refused to cooperate in the defense of the company and return the
17 documents, his employer Defendant Newport Service Corporation, fired him.

18 3. I continued to request the documents of Spondello and his attorney
19 Robert Coviello starting with my first conversation with Mr. Coviello on May 27, 2
20 days before Spondello testified he sent the 25 boxes to the IRS and 3 days before
21 his whistleblower attorney sent the May 30 memorandum with the document
22 inventory identifying some privileged documents.

23 4. On June 22 in attempting collect documents for the state court action,
24 I asked Mr. Coviello point blank if Spondello had given the documents to the
25 Government, but Coviello would not answer the question. Finally on June 24,
26 Coviello admitted to me that Spondello had provided all documents to the IRS and
27 that he had no documents to produce in the state litigation.

28

1 5. After initially withholding Robert Stientjes' May 30, 2009
2 memorandum to the IRS, Coviello finally produced it on September 8, 2009. The
3 memo identified communications and notes of communications between MDC and
4 the defendants' officers and its outside counsel about tax matters and states that
5 several folders and documents have "Taint Issues." There are also descriptions of
6 documents that appear to relate to the exchange of legal advice that are not flagged
7 as having "Taint Issues," underlining why Defendants should be doing their own
8 privileged review.

9
10 I declare under penalty of perjury under the laws of the United States of
11 America that the foregoing is true and correct and that this Declaration was
12 executed this 18th day of September in San Francisco, California.

13
14 /s/ Neil A. Goteiner
 Neil A. Goteiner